

296 Transcript, Abrams at 241. Representatives of the Group have assured Commission staff that once the Principles have been finalized, the Group will find a mechanism to ensure that they are on-going, perhaps through involvement of a related trade association such as the IIA.

297 Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a) (1997), prohibits unfair or deceptive acts or practices in or affecting commerce. By signing the Principles, a signatory represents that its information practices are consistent with the Principles. Subsequent action by the signatory that is not consistent with the Principles may thus be actionable under the FTC Act (or similar state statutes) as a deceptive act or practice. Of course, compliance with the Principles does not immunize the signers from scrutiny of their conduct under section 5.

298 In implementing this aspect of the Principles, signatories should take care not to deny information to legitimate enterprises, particularly new entrants or others proposing to provide innovative, beneficial services. Accordingly, entities seeking access to information should be given a full and fair opportunity to demonstrate that their operations are consistent with the Principles or the underlying objectives of the Principles. By the same token, as the pace of technological change facilitates new approaches to the provision of individual reference services, the Commission urges that the IRSG ensure that the application of the Principles does not discourage innovative approaches that do not adversely affect consumers.

299 Likewise, the provision that requires signatories to allow individuals to opt out of general distribution does not apply to information obtained from publicly available sources. As a result, if an individual opts out, that individual's address will be suppressed from databases created from non-public sources (*e.g.*, credit headers) but it may still be available through databases created from publicly available information (*e.g.*, DMV records).

300 The Principles also fail to make signatories directly accountable to wronged individuals, a control important to several privacy advocates. Transcript, Avrahami at 305-06; Transcript, Rotenberg at 324; Comments of Avrahami at 8 (Doc. No. 23); Comments of Biggerstaff at 23-24 (Doc. No. 3).

301 Commentary, App. E, at 4.

302 *Id.*

303 An audit trail requirement is also absent from the Principles. The Commission does not recommend that an audit trail be required at this time because the access restrictions appear to be sufficient to prevent misuse. If great harm does occur despite the Principles' limitations on the availability of sensitive identifying information, the Commission would urge the IRSG to revisit this issue.

304 If an entity makes an adverse decision about a consumer based on information in a consumer report from a consumer reporting agency, the FCRA already requires, *inter alia*, that the entity provide the consumer with an adverse action notice. Furthermore, Section 615(b) requires a creditor that denies, or increases the charge for, credit based on information *bearing on a consumer's credit worthiness* from any source *other than a consumer reporting agency*, upon request, to disclose to the consumer the nature of that information. *See supra* n. 174.

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# Appendix A: Methodology

# Appendix A: Methodology

The Commission has gathered information about individual reference services in various ways. On March 6, 1997, the Commission issued a *Federal Register* Notice informing the public that the Commission would conduct this study. This notice announced that the Commission would hold a public workshop and requested public comment on certain specified issues and on any other issue of fact, law, or policy that could inform the Commission's study.<sup>1</sup> Additionally, FTC staff has met with dozens of individuals who requested to participate in the workshop. Staff has also spoken with entities whose views, experience, or information could better inform the Commission's analysis or help provide a balanced record. On June 10, 1997, the Commission held a one-day public workshop on individual reference services.<sup>2</sup> Panelists representing a broad range of view points and involved in varied aspects of the individual reference services industry responded to questions from the Commission about sources of and access to information contained in individual reference services' databases, the uses of that information and associated benefits and risks, and potential responses to address concerns.<sup>3</sup> In response to the *Federal Register* notice and the workshop, the Commission has received 272 formal written comments.<sup>4</sup>

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<sup>1</sup> 62 *Federal Register* 10,271 (March 6, 1997). The *Federal Register* notice is included in Appendix A1.

<sup>2</sup>This workshop was part of a four-day public workshop held by the FTC to examine consumer information privacy in the emerging electronic marketplace. The workshop also examined current practices regarding the collection and use of personal information on-line, including information collected from and about children, self-regulatory efforts and technological developments since June 1996, and as unsolicited commercial e-mail.

<sup>3</sup>The Workshop agenda, including the names of all participants, is included in Appendix B. The transcript of the workshop is posted on the FTC's Web site at <<http://www.ftc.gov/bcp/privacy2>>.

<sup>4</sup>These comments are on file at the FTC and posted on the FTC's Web site at <<http://www.ftc.gov/bcp/privacy2>>.

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# Appendix A-1: Federal Register Notice

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## Appendix B: Agenda

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# Appendix C: Public Comments

# Appendix C: List of Comments Submitted Pursuant to *Federal Register Notice*

Accipiter	Doc. No. 007
Association for Children for Enforcement and Support (ACES)	Doc. No. 005, Doc. No. 006
American Bankers Association (ABA)	Doc. No. 004
American Marketing Association	Doc. No. 001
James K. Archibald	Doc. No. 022
Association of National Advertisers	Doc. No. 030
Ram Avrahami	Doc. No. 023
Robert Biggerstaff	Doc. No. 003
CDB Infotek	Doc. No. 020
Center for Democracy and Technology (CDT)	Doc. No. 029
Childcare Checkpoint	Doc. No. 034
Department of Treasury, United States Secret Service	Doc. No. 028
Direct Marketing Association (DMA)	Doc. No. 014
Dun & Bradstreet	Doc. No. 036
Electronic Privacy Information Center (EPIC)	Doc. No. 026
eTRUST	Doc. No. 010
GE Capital/Montgomery Ward CRT	Doc. No. 002
Independent Bankers Association of America (IBAA)	Doc. No. 024
Individual Reference Services Group (IRSG)	Doc. No. 035
Information Industry Association (IIA)	Doc. No. 032
Junkbusters Corporation	Doc. No. 015
LEXIS-NEXIS	Doc. No. 018, Doc. No. 18A
National Consumers League (NCL)	Doc. No. 012
National Council of Investigation & Security Services, Inc. (NCISS)	Doc. No. 011
National Retail Federation (NRF)	Doc. No. 021
National White Collar Crime Center	Doc. No. 033
New York State Department of Law (NYAG)	Doc. No. 008
Piper and Marbury	Doc. No. 017
Privacy Rights Clearinghouse (PRC)	Doc. No. 006, Doc. No. 016A
<i>Privacy Times</i>	Doc. No. 009
Private Investigation Industry <i>see</i> pp. 2-5, Appendix C	Doc. Nos. 037 - 271
Reporters Committee for Freedom of the Press (Reporters Committee)	Doc. No. 016
United States Department of Justice, Computer Crimes Division	Doc. No. 031
United States Office of Consumer Affairs	Doc. No. 025
VISA USA	Doc. No. 019

# Comments from the Private Investigation Industry

A.A. & Associates, Inc.	Doc. No. 070
ABBA Investigations	Doc. No. 256
Acta Investigations, Inc.	Doc. No. 136
Adams' Investigations	Doc. No. 049
Agency-One Investigations, Inc.	Doc. No. 048
Alaska Investigators' Association	Doc. No. 138
Alaska Shield	Doc. No. 096
American Investigations & Security International	Doc. No. 184
A.M. & Investigations, Inc.	Doc. No. 125
Arbiter Investigations	Doc. No. 153
Area Wide Investigations	Doc. No. 180
Carlos S. Arias	Doc. No. 060
Associated Global Insurance Services, Inc.	Doc. No. 174
Attorneys' Investigative Consultants	Doc. No. 113
Atwater Enterprises	Doc. No. 185
Aurora Investigations, Inc.	Doc. No. 142
Badger State Detective Agency	Doc. No. 088
Badger State Investigative Service	Doc. No. 079
Ball & Weed	Doc. No. 143
Ball & Weed	Doc. No. 182
Ball & Weed	Doc. No. 261
Ball & Weed	Doc. No. 271
Bates Investigations	Doc. No. 152
Bayview Investigations	Doc. No. 067
Benett Investigations Inc	Doc. No. 078
Biscomb, P.I.	Doc. No. 043
Black Knight Investigations	Doc. No. 066
Bob Nesvick Investigative Services	Doc. No. 087
Bombet, Cashio & Associates	Doc. No. 069
Michael J Brosnan P.D.	Doc. No. 082
Cascade Pacific Detective Agency	Doc. No. 047
Central Bail Bond Investigations	Doc. No. 146
Cervantes & Associates, Inc.	Doc. No. 109
Cervantes & Associates, Inc.	Doc. No. 194
Citadel Protection & Investigations, Inc.	Doc. No. 134
Corporate Investigative Services, Inc.	Doc. No. 102
Countrywide Asset Investigators	Doc. No. 123
C.R. Cochran & Associates	Doc. No. 084
Cynthia Erdelyi Investigations, CPL, CIP	Doc. No. 141
Data Research, Inc.	Doc. No. 259
Dameron Investigative Services	Doc. No. 193
Daniel & Nicolai	Doc. No. 265



David C. Anmahian & Associates	Doc. No. 051
DCR Enterprises	Doc. No. 177
Delta Investigations	Doc. No. 081
Steven E. Detata	Doc. No. 155
Dial Services, Inc.	Doc. No. 089
DLS Investigations	Doc. No. 139
Don Malone & Associates, Inc.	Doc. No. 149
Darryl Drew	Doc. No. 156
Eagle Information Service	Doc. No. 057
Eagle Investigations	Doc. No. 072
Edie Lee & Associates	Doc. No. 192
Edward R. Kirby & Associates, Inc.	Doc. No. 071
Ellis Investigations	Doc. No. 115
EX-CEL Investigations	Doc. No. 120
EX Fed Investigative Services, Inc.	Doc. No. 173
Factfinders	Doc. No. 094
Factfinders	Doc. No. 122
William E. Fason, P.I.	Doc. No. 075
Five Rivers Investigations	Doc. No. 074
Flynn & Associates	Doc. No. 179
Flynn & Associates	Doc. No. 187
Forensic Analysts Investigations	Doc. No. 129
Arthur J. Forster	Doc. No. 099
Gerald Adams & Associates, Inc.	Doc. No. 145
Global Intelligence Network, Inc.	Doc. No. 045
Global Intelligence Network, Inc.	Doc. No. 269
Gradoni & Associates	Doc. No. 255
Gray Security, Inc.	Doc. No. 140
Joseph T. Grills	Doc. No. 103
Alan Grover	Doc. No. 257
G.W. Mack Investigations	Doc. No. 158
Haberkern & Company	Doc. No. 106
Hans de Haas & Associates, Inc.	Doc. No. 083
Henderson & Associates	Doc. No. 264
M. Randall Hicks	Doc. No. 098
HUB Enterprises, Inc.	Doc. No. 110
IAI Investigative Associates, Inc.	Doc. No. 151
Information Please	Doc. No. 189
Information Services	Doc. No. 266
Information Services Investigations, Inc.	Doc. No. 175
International Management Assistance Corporation	Doc. No. 095
International Research Services, Inc.	Doc. No. 112
Investigative Dynamics, Inc.	Doc. No. 117
Invex	Doc. No. 114
ION Incorporated	Doc. No. 076
J.L. Fry Research & Investigations	Doc. No. 073

JMK Investigations	Doc. No. 254
John W. Palich Investigations	Doc. No. 131
JR Investigations	Doc. No. 077
JR Investigations	Doc. No. 178
J.W. Strelec Investigations	Doc. No. 144
James L. Kellner	Doc. No. 085
Kellogg Investigation Services	Doc. No. 157
Klopper Investigations	Doc. No. 119
Krisztina Reports, Inc.	Doc. No. 061
Krotzer Legal Investigations	Doc. No. 065
Langhammer & Associates, Inc	Doc. No. 080
Lassen Investigative Services	Doc. No. 093
Legal Research Services Investigations, Inc.	Doc. No. 053
Litigation Assistance Work	Doc. No. 172
L. Michael Connelley & Associates	Doc. No. 176
Management Protection Services	Doc. No. 253
MarKahn Co.	Doc. No. 137
John F. Matula	Doc. No. 126
MG Investigations	Doc. No. 263
Al Morris	Doc. No. 171
NASA One Services	Doc. No. 181
NationsBank	Doc. No. 160
Ed Nickel	Doc. No. 038
Noragon & Associates	Doc. No. 042
N. R. Cochran & Associates	Doc. No. 166
Pacific Investigations	Doc. No. 165
Paladin Investigations	Doc. No. 054
Perrin Investigative Service	Doc. No. 068
PFC Information Services, Inc.	Doc. No. 190
Steven H. Phelps	Doc. No. 147
Charles Pollard	Doc. No. 154
P&R Executive Services Agency	Doc. No. 133
P&R Executive Services Agency	Doc. No. 163
Professional Inquiry, Inc.	Doc. No. 092
Professional Investigative Consultants	Doc. No. 183
Professional Investigators & Security Association	Doc. No. 162
Protec	Doc. No. 127
R. A. Heales & Associates, LTD	Doc. No. 059
Carl S. Raphael, P.I.	Doc. No. 052
Ray, McChristian & Jeans	Doc. No. 191
RJC & Associates Investigations	Doc. No. 086
R.J.N. Investigations, Inc.	Doc. No. 124
R.J. Slepiski Investigations, Inc.	Doc. No. 118
Scott I. Ross	Doc. No. 111
Ruffin & Associates	Doc. No. 178-2
Saraceno Investigations	Doc. No. 044

Security Solutions, Inc.	Doc. No. 148
Scope Investigative Network	Doc. No. 260
Shimrak Investigations	Doc. No. 104
Skyhawk Investigations	Doc. No. 116
Sleuth, Inc.	Doc. No. 100
Sleuth Fox Investigations	Doc. No. 064
Special Inquiry Company	Doc. No. 268
Specialized Investigations	Doc. No. 055
Specialized Investigations, Inc.	Doc. No. 132
Steele Investigation Agency	Doc. No. 168
Strasburger & Price, L.L.P.	Doc. No. 186
Superior Service Bureau	Doc. No. 063
Tactical Investigative Services	Doc. No. 039
Tamara Thompson Investigation	Doc. No. 050
Target Investigation Service	Doc. No. 267
Technical Surveys Consulting	Doc. No. 258
Texas Investigative Network, Inc.	Doc. No. 150
Texas Judgment Recovery Co., Inc.	Doc. No. 161
The Knorok Detective Agency	Doc. No. 164
Thistle Investigation Services	Doc. No. 270
Topp Notch Investigations	Doc. No. 046
Trace Investigations	Doc. No. 121
Trace Investigations	Doc. No. 135
Universal Investigations, Inc.	Doc. No. 159
Universal Protective & Investigations, Inc.	Doc. No. 090
Video Trackers, Inc.	Doc. No. 058
Vinson Detective Agency	Doc. No. 050-2
Vinson Detective Agency	Doc. No. 056
Vinson Detective Agency	Doc. No. 108
W. A. Haag & Associates Inc.	Doc. No. 091
Wallace Investigations	Doc. No. 040
Walter Markely Investigations, L.C.	Doc. No. 167
We Investigate, Inc.	Doc. No. 170
Cal West	Doc. No. 107
West Shield Investigations	Doc. No. 188
Whitley Security and Investigations	Doc. No. 252
Wilcox & Associates	Doc. No. 128
William Sykes & Associates	Doc. No. 097
Wind River Public Safety Services	Doc. No. 062
Wood & Tait	Doc. No. 041
World Investigations	Doc. No. 101
Zrod Investigations	Doc. No. 130
262 Jointly Filed Comments from Individual Members of Private Investigation Industry	Doc. No. 105

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# Appendix D: IRSG PRINCIPLES

## *Individual Reference Services Group*

FINAL — DECEMBER 15, 1997

### INDIVIDUAL REFERENCE SERVICES INDUSTRY PRINCIPLES

#### PREAMBLE:

The following principles were developed by members of the individual reference services industry to respond, as an industry, to heightened interest in the industry's practices. The principles represent good practices that the undersigned companies agree to support as part of their operating practices. While it may take up to a year for some principles to be implemented fully, other principles are already part of the operating practices of the undersigned companies.

#### SCOPE:

These principles apply to individual reference services, which are commercial services that directly or as suppliers to others provide information that assists users in identifying individuals, verifying identities and locating individuals for various purposes.

#### DEFINITIONS :

- *Public Record Information:* Information about or related to an individual which has been obtained originally from the records of a federal, state, or local governmental entity that are open for public inspection
- *Publicly Available Information:* Information about an individual that is available to the general public from non-governmental sources such as telephone directories, classified ads, newspaper reports, publications, or other forms of information.
- *Non-Public Information:* Information about an individual that is of a private nature and neither available to the general public nor obtained from a public record.
- *Appropriate or Appropriately:* Describes actions or uses that are reasonable under the circumstances reflecting a balance between the interests of individual privacy and legitimate business, governmental, and personal uses of information, including prevention and detection of fraud.

42 PRINCIPLES:

43

44 I. *Education*: Individual reference services shall individually and through their industry groups  
45 make reasonable efforts to educate users and the public about privacy issues associated with their  
46 services, the types of services they offer, these principles, and the benefits of the responsible flow  
47 of information.

48

49 11. *Reputable Sources*: Individually identifiable information shall be acquired from only sources  
50 known as reputable in the government and private sectors.

51

52 A. Reasonable measures shall be employed to understand an information source's data  
53 collection practices and policies before accepting information from that source.

54

55 B. Individually identifiable information that is collected for marketing purposes shall not  
56 knowingly be purchased, sold or retained for creating or inclusion in individual  
57 reference services, unless it is PUBLIC RECORD INFORMATION or PUBLICLY AVAILABLE  
58 INFORMATION; its use is specifically permitted by law; or it is collected with notice to  
59 the individual that such information will be used for inclusion in individual reference  
60 service products.

61

62 III. *Accuracy*: Reasonable steps shall be taken to help assure the accuracy of the information in  
63 individual reference services. The goal of individual reference service products is to furnish  
64 customers with accurate reproductions of information.

65

66 A. When contacted by an individual concerning an alleged inaccuracy about that  
67 individual, the individual reference service, as APPROPRIATE, shall either correct any  
68 inaccuracy or inform the individual of the source of the information and, if reasonably  
69 available, where a request for correction may be directed.

70

71 B. The individual reference service's commitment to furnish users with reasonably  
72 accurate reproduction of information in PUBLIC RECORD INFORMATION systems does not  
73 permit alteration of the substantive content of PUBLIC RECORD INFORMATION products or  
74 services.

75

76 IV. *Public Record and Publicly Available Information*: PUBLIC RECORD INFORMATION and  
77 PUBLICLY AVAILABLE INFORMATION shall be usable without restriction unless legally prohibited.

78

79 V. *Distribution of Non-Public Information*: Except as provided in section IX, NON-PUBLIC  
80 INFORMATION will be distributed only according to the criteria set forth below. The nature of  
81 NON-PUBLIC INFORMATION being requested and the intended uses of such information shall  
82 determine the level of review of the subscriber. Companies who supply information covered by  
83 this section to individual reference services shall provide such information only to individual  
84 reference services that adopt or comply with these principles.

85  
86 A. *Selective and Limited Distribution of Non-Public Information:* Individual reference  
87 services may distribute NON-PUBLIC INFORMATION without restriction of its contents  
88 only to qualified subscribers.  
89  
90 1. Qualified subscribers for the selective and limited distribution of NON-PUBLIC  
91 INFORMATION must satisfy the following conditions:  
92  
93 a. The subscribers must state their APPROPRIATE uses for such information.  
94  
95 b. The subscribers must agree to limit their use and redissemination of such  
96 information to such APPROPRIATE uses.  
97  
98 c. The subscribers shall be reasonably identified and meet qualification  
99 requirements that establish them as APPROPRIATE users of the  
100 information and agree to terms and conditions consistent with these  
101 principles prior to accessing the information.  
102  
103 2. Each individual reference service shall take reasonable steps to protect against  
104 misuse of NON-PUBLIC INFORMATION distributed pursuant to this subsection  
105 which will include:  
106  
107 a. Each individual reference service shall make available upon request an  
108 explanation of what uses of its information are APPROPRIATE and to  
109 which types of qualified subscribers such information is available.  
110  
111 b. Individual reference services shall conduct a reasonable review of the  
112 subscriber and its intended uses of the information prior to making NON-  
113 PUBLIC INFORMATION available to the subscriber.  
114  
115 c. Individual reference services shall maintain a record of the identity of  
116 subscribers, the types of uses, and the terms and conditions agreed to by  
117 the subscriber for three years after termination of each subscriber's  
118 relationship with the individual reference service.  
119  
120 d. Reasonable measures shall be employed to help assure that qualified  
121 subscribers use NON-PUBLIC INFORMATION APPROPRIATELY.  
122  
123 e. Individual reference services shall implement reasonable mechanisms to  
124 remedy subscriber abuses of the information.  
125  
126 B. *Commercial and Professional Distribution of Non Public Information:* Individual  
127 reference services, when they limit the NON-PUBLIC INFORMATION content of their

products or services as set forth below, may distribute such products or services only to established professional and commercial users who use the information in the normal course and scope of their business or profession and the use is APPROPRIATE for such activities.

1. NON-PUBLIC INFORMATION products or services distributed pursuant to this subsection shall not include:

a. Information that reflects credit history, financial history, medical records, mother's maiden name identified as such, or similar information.

b. Certain information like social security number and birth information unless truncated in an APPROPRIATE and industry consistent manner.

2. Users shall agree to terms and conditions consistent with these principles prior to accessing the NON-PUBLIC INFORMATION, shall agree to use such information solely in the normal course and scope of their business or profession and that the use is APPROPRIATE for such activities and that they shall limit their use and redissemination of such information to such uses and in accordance with these principles.

3. Individual reference services shall take reasonable steps to protect against misuse of the NON-PUBLIC INFORMATION distributed pursuant to this subsection which will include:

a. If not previously established, the individual reference service shall take reasonable steps to identify the user and to establish the user as an established professional or commercial entity.

b. Reasonable measures shall be employed to help assure that commercial and professional customers use NON-PUBLIC INFORMATION APPROPRIATELY.

c. Individual reference services shall implement reasonable mechanisms to remedy subscriber abuses of the information.

d. Individual reference services shall maintain a record of the identity of subscribers and the terms and conditions agreed to by the subscriber for three years after termination of each subscriber's relationship with the individual reference service.



170 *C. General Distribution of Non-Public Information:* Individual reference services, when  
171 they limit the NON-PUBLIC INFORMATION content of their products or services as set  
172 forth in this subparagraph, may distribute such products or services to any person.  
173

174 1. NON-PUBLIC INFORMATION distributed pursuant to this subparagraph shall not -  
175 knowingly include information that reflects social security number, mother's  
176 maiden name identified as such, non-published telephone number, or non-  
177 published address information obtained from telephone companies, birth  
178 information, credit history, financial history, medical records, or similar  
179 information, nor will the service be retrievable by a social security number.  
180

181 2. *The* individual reference service shall take reasonable steps to protect against  
182 the misuse of NON-PUBLIC INFORMATION  
183

184 VI. *Security:* Individual reference services shall maintain facilities and systems to protect  
185 information from unauthorized access and persons who may exceed their authorization. In  
186 addition to physical and electronic security, individual reference services shall reasonably  
187 implement:  
188

189 A. Employee and contractor supervision—Employees and contractors shall be required to  
190 sign confidentiality agreements and be subject to supervision.  
191

192 B. Reviews—System reviews shall be made at APPROPRIATE intervals to assure that  
193 employees are complying with policies  
194

195 VII. *Openness:* Each individual reference service shall have an information practices policy  
196 statement that describes what types of information it has, from what types of sources, how it is  
197 collected, the type of entities to whom it may be disclosed and the type of uses to which it is put,  
198 and shall make its policy statement available upon request. Consumers shall be notified about  
199 these practices in various ways such as:  
200

201 1. Web sites;

202 2. Advertisements; or

203 3. Company or industry-initiated educational efforts.  
204

205  
206 VIII. *Choice:* Each individual reference service shall upon request inform individuals of the  
207 choices, if any, available to limit access or use of information about them in its data base,  
208 provided, however, that in the case of NON-PUBLIC INFORMATION distributed to the general  
209 public (section V.C of these principles), an individual reference service shall provide an  
210 opportunity for an individual to limit the general public's access or use of such NON-PUBLIC  
211 INFORMATION.  
212

213  
214 IX. Access: Upon request and reasonable terms, an individual reference service shall:  
215  
216 A. Inform an individual about the nature of PUBLIC RECORD and PUBLICLY AVAILABLE  
217 INFORMATION that it makes available in its products and services and the sources of -  
218 such information;  
219  
220 B. Provide individuals with NON-PUBLIC INFORMATION contained in products and services  
221 that specifically identifies them and that are distributed as part of an individual  
222 reference service to users under section V. of these Principles unless the information  
223 was obtained on a limited use basis from a governmental agency or if its disclosure is  
224 limited by law or legally recognized privilege. and  
225  
226 c. Direct individuals to a consumer reporting agency regulated by the Fair Credit  
227 Reporting Act where such agency is the source of the information about the individual.  
228  
229 X. *Children:* Where an individual is identified in the product or service as being under the age  
230 of 18, no NON-PUBLIC INFORMATION about that individual shall be provided for other than  
231 selective and limited distribution purposes or for the purposes of locating missing children.  
232  
233 XI. *Assurance of Compliance:* The signers of these principles shall have completed within 15  
234 months of the effective date of these principles, and on a periodic basis thereafter, at least once  
235 every year, an assurance review done by a reasonably qualified independent professional service.  
236 The independent professional service shall apply assurance criteria consistent with these  
237 principles and approved by the signers as a group. Individual referenceservices shall have a  
238 reasonable opportunity to respond to any concerns expressed in such assurance review. A  
239 summary reflecting both the [original] report and any subsequent actions taken or response made  
240 by the company shall be publicly available.  
241

242 PLEDGE:

243

244 The undersigned companies pledge to introduce and follow the above industry principles at the  
245 earliest practicable opportunity or by December 31, 1998, whichever is sooner.

246

247

Axiom Corporation

248

CDB Infotek, a ChoicePoint Company

249

DCS Information Systems

250

Database Technologies, Inc.

251

Equifax Credit Information Services, Inc.

252

Experian

253

First Data Solutions Inc.

254

Information America, Inc.

255

IRSC, Inc.

256

LEXIS-NEXIS

257

Metromail Corporation

258

National Fraud Center

259

Online Professional Electronic Network

260

Trans Union Corporation

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# Appendix E: Industry Principles -- Commentary

## *Individual Reference Services Group*

FINAL — DECEMBER 15, 1997

### INDUSTRY PRINCIPLES — COMMENTARY

#### BACKGROUND:

The Individual Reference Services Group (IRSG) is composed of leading companies of the individual reference services industry. In recognition of the heightened interest in issues related to their services, the IRSG has developed self-regulatory principles. The focus of these principles is non-public information; that is, information **about** an individual that is of a private nature and not generally available to the public nor obtained from a public record. Signatories to these principles include individual reference services, as well as those companies that supply information to such services.

Individual reference services provide information that identifies or locates individuals. These services provide important societal benefits. For example, information obtained from these services helps locate witnesses to crimes and parents who are delinquent in their child support payments, and assists in important governmental and business functions such as fraud prevention and detection. The principles do not apply to functions other than identifying or locating individuals or **verifying** individual identities. For instance, database services of newspaper archives, or of prior business records relating to an individual, and database services used primarily for risk assessment, lie outside the scope of the principles.

Increased market demand, a highly mobile society, as well as rapid advances in technology, have spurred increased reliance upon and availability of information obtained through services provided by companies in the individual reference services industry.

This increased reliance upon and availability of information has heightened consumer interest regarding privacy and identity fraud concerns, as well as services provided by companies within the individual reference services industry. It is notable that there is no evidence these services are used for **unlawful** purposes. Nor has any organization or study, including the Federal Reserve Board in its specially commissioned 1997 report to Congress, been able to point to a single case of identity fraud that resulted from the misuse of an individual reference service.

Members of the individual reference services industry recognize the importance of minimizing risks associated with their services, and are strongly committed to taking a leadership role on these issues. The IRSG also realizes that self-regulation of this industry is the most effective and efficient way to minimize these risks. It is with this background that the IRSG has adopted these principles.

## SUMMARY OF PRINCIPLES:

IRSG members commit to educating their users and the public about the services they offer and the privacy issues that are associated with these services. An educational initiative will allow users and the public to understand the capabilities of these services, and enable users to *utilize the information obtained from these services responsibly*.

The principles mandate that companies in the individual reference services industry acquire individually identifiable information only from sources known as reputable in the government and private sectors. They also adopt the Direct Marketing Association's long-standing prohibition on the use for non-marketing purposes of personally identifiable information obtained from marketing transactions. This refers primarily to customer lists and other material that reflects transactions undertaken by an individual. Here, with a few exceptions, the principles prohibit services from knowingly purchasing or selling individually identifiable information that is collected for marketing purposes and from knowingly retaining such marketing information for inclusion in their individual reference services. This would include information obtained from customer lists, warranty card responses, and the like. While marketing data generally may not be used as an individual reference resource, individual reference services may be used for direct marketing purposes, such as verifying the addresses of individuals for delivery purposes.

The core of the IRSG's self-regulatory effort is the self-imposed restriction on use and dissemination of non-public information about individuals in their personal (not business) capacity. In addition, IRSG members who supply non-public information to other individual reference services will provide such information only to companies that adopt or comply with the principles. The principles define the measures that IRSG members will take to protect against the misuse of this type of information. The restrictions on the use of non-public information are based on three possible types of distribution that the services provide.

For *selective and limited* distribution of non-public information, the companies commit to state what uses of their information are appropriate and to provide such products only to qualified subscribers. Such subscribers are required to state their appropriate purpose for using such information and agree to limit the use and redissemination of such information to those stated purposes. The subscribers' qualifications and intended uses will be reviewed before the non-public information is made available, with the extent and nature of the review determined by the nature of the non-public information being requested.

For *commercial and professional* distribution of non-public information, the companies commit to limiting distribution to established professional and commercial users who will use the information only for appropriate purposes within the normal course and scope of their business or profession. Certain categories of non-public information, such as financial or medical records, will be excluded from this type of distribution. Records that reveal an individual's mother's maiden name identified as such also will not be distributed. Social security numbers and date of birth information will be distributed only if truncated in an appropriate manner. For example, recognizing the importance of preventing the reconstruction of original information otherwise

protected by these principles, the industry has adopted the consistent practice of masking the last four or more digits of social security numbers. These exclusions are intended solely for non-public information, and will not apply to public or publicly available information that may contain social security numbers or similar data.

In order to protect against abuse in both *selective and limited distribution* and *commercial and professional distribution*, individual reference services will maintain certain records, including the identity of subscribers and the terms and conditions agreed to by them, for three years after termination of each subscriber's relationship with the individual reference service. In addition, the companies will take steps to remedy abuses, if any, that they may learn about.

For *general distribution* of non-public information, the companies will not knowingly provide non-public information products that contain an individual's social security number, mother's maiden name identified as such, non-published telephone directory information obtained from a phone company (as defined by Newton's Telecommunications Dictionary), date of birth information, credit history, financial history, medical records, or similar information. The services also will not provide products in which information is retrievable by input of a social security number. The individual reference service will take reasonable steps to protect against the misuse of non-public information provided in this type of distribution.

In addition to limiting access to non-public information, the principles require individual reference services to provide security to avoid unauthorized access to their materials. The security provided will include both technical and managerial controls to protect information. Periodic reviews of security also will be made to ensure the proper protection of information.

In the spirit of openness, the principles require individual reference services to have an information practices policy statement available to the public upon request. These statements will describe the types of information included, the types of sources from which that information is obtained, the nature of how the information is collected, the type of entities to whom the information may be disclosed, and the type of uses to which the information may be put. This openness will enable individuals to understand the reference service's use of the information it possesses.

Individual reference services will also inform individuals, upon request, of the choices, if any, available to limit access or use of information about them contained in the products and services that the companies create, maintain, or provide access to. The ability of an individual to limit access to his or her information should not serve as an impediment to law enforcement use of the databases. However, individual reference services will provide individuals with an opportunity to limit the public's access or use of non-public information about them that is distributed to the general public under principle V C.

The principles also require an individual reference service to provide information about the nature of public record and publicly available information that it makes available in its products and services and the sources of such information. Subject to limited legal and security exceptions,

the companies will make available to individuals, upon request and under reasonable conditions, non-public information contained in products or services that specifically identifies them and that is distributed as part of an individual reference service to users.

The FTC disagrees with the IRSG's approach to responding to requests by individuals for public record information about themselves contained in a company's databases. Where the requested information is publicly available or a matter of public record, the principles allow the individual reference service to provide guidance on how the requester can obtain the information directly from the source. The FTC proposes that companies furnish individuals with all public record and publicly available information about themselves contained in the companies' databases in order to address two accuracy-related issues: first, the possibility that errors might arise in the transmission of information from the source to the company's database; and second, the possibility that information about different individuals might be mistakenly linked in compilations about a single individual.

The signatories of these principles understand the public's interest in enabling individuals to verify that errors do not occur when public record and publicly available information is transmitted or compiled about them. However, technological advancements have eliminated the need for most companies to keystroke or otherwise manually input this type of information, thereby significantly reducing the possibility for error. This, the signatories believe, when coupled with quality assurance measures implemented by the industry, yields information that reliably reflects the data provided by the originating public record source.

Moreover, there is an enormous potential burden associated with retrieving and verifying relevant information from the large number of databases of public records. This contrasts with the modest burden associated with retrieving information about an individual from the far smaller number of databases of non-public information. It should also be noted that many of the potential harms that might befall an individual whose public record information is inaccurate are already addressed by existing laws, including the Fair Credit Reporting Act.

Nevertheless, the signatories have pledged to reexamine, in 18 months, the issue of responding to requests by individuals for public record information about themselves.

In addition, the experience of applying these principles and conducting the assurance reviews will shed further light on the accuracy issue to the extent to which any inaccuracies might be derived from transmission or compilation errors that may occur under the control of an individual reference service. Based upon this experience, the signatories over the next 18 months will collectively or individually carefully consider undertaking a study to assess the accuracy of information about individuals in their databases as a reflection of the information about such individuals provided by the originating public record source.

In connection with children, the individual reference services industry recognizes the heightened sensitivity necessary in dealing with the individually identifiable information about



children. For this reason, the principles strictly limit the availability of non-public information concerning anyone identified as being under the age of eighteen.

The signatories of these principles commit to having annual assurance reviews conducted of those services they offer that they identify as being subject to the principles. These reviews will be conducted by qualified independent professional services such as accounting firms, law firms, or security consultants. These independent professional services will use criteria developed by assurance professionals and approved by the signers as a group. As experience and changing circumstances require changes in the principles or in the criteria used for assurance reviews, the approval of the signers as a group will be needed to adopt such changes.

Companies will have a reasonable opportunity, determined by the nature of the concern and circumstances that surround it, to respond to any concerns that are expressed in such assurance reviews. Because individual reference services that obtain non-public information from IRSG members will be required by contract to abide by the principles, they, too, will need to have assurance reviews conducted annually.

While a summary of each assurance report shall be made publicly available, the signatories of these principles are exploring additional means of enabling the public to identify individual reference services that are in compliance with these principles.

The IRSG members believe that these principles provide the most effective way to secure the benefits of these important information service resources while assuring effective protection of consumer privacy. IRSG members pledge to implement these principles fully by no later than December 31, 1998.